



MEMORANDUM

TO: City Council

FROM: L. Kimball Payne, III, City Manager

DATE: January 24, 2002

SUBJ: Virginia School of the Arts

I have been asked to bring before Council a proposal from the Virginia School of the Arts to eliminate a contingency reversionary interest clause in the deed that conveyed the Garland-Rodes Building on Rivermont Avenue to the school in 1995. A copy of the deed is attached for reference.

It is my understanding that the clause in question is detrimental to the school's attempts to finance improvements to the building by borrowing against the property. It is staff's belief that Council's interest in ensuring that the use of the building is compatible with the neighborhood could be addressed by amending the deed to include restrictive covenants on the use of the building and providing Council with the first right of refusal should the school cease its activities. Amending the deed would require a public hearing since there is a property matter at issue.

Concurrently, staff would recommend that Council consider conveying to the School of the Arts a sliver of land along the front of the property. Presently the property boundary goes through the center of the retaining wall location. This has resulted in a cost sharing arrangement for the replacement of the wall. Staff proposes that the wall should be entirely on the school property and asks that Council consider this change along with the proposed amendment to the deed.

Information on the Virginia School of the Arts is included for your review.

CC: Walter Erwin  
Mike Gambone

Attachments

THIS DEED, made this 8th day of February, 1995, by and between THE CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, party of the first part. (Grantor) ; and VIRGINIA SCHOOL OF THE ARTS, INC., a Virginia corporation, party of the second part (Grantee) ;

**W I T N E S S E T H:**

WHEREAS, the Charter of the City of Lynchburg 1928, as amended, Section 38-1, Section 38-2, and Section 38-14, authorizes the City Council to convey real estate to an educational institution; and,

WHEREAS, it is deemed the conveyance of the hereinbelow described property to the Grantee will facilitate the Virginia School of the Arts as an educational entity in Lynchburg;

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, by the Grantee to the Grantor, and other valuable considerations, the receipt of which is hereby acknowledged, the party of the first part does hereby sell, grant and convey, subject to certain covenants, conditions and restrictions stated hereinbelow, with Special Warranty, unto the party of the second part, the following described property:

All that certain lot or parcel of land known as Tax Map No. 20-01-02, with the improvements thereon lying and situate in the City of Lynchburg, Virginia, on Rivermont Avenue, located between Columbia Avenue and the entrance to Riverside Park, known as Garland-Rodes School, and with all improvements now or hereafter located thereon, together with all tenements, hereditaments, appurtenances, rights, privileges, thereunto belonging and appertaining, described in the plat attached hereto and to be recorded herewith, to-wit:

BEGINNING at an iron pin set in the wall at the intersection of Columbia Avenue and Rivermont Avenue at the northeast corner of said intersection: thence N. 07° 55' 00" W. 212.19 feet to an iron pin found: thence N. 80° 36' 44" E. 114.10 feet to an iron pin found; thence N. 05° 45' 12" E. 60.18 feet to an iron pin set; thence S. 62° 30' 00" E. 223.66 feet to an iron pin set; thence S. 11° 23' 33" W. 197.66 feet to a point; thence on a curve with a radius of 757.00 for a length of 250.00 feet along Rivermont Avenue to the point of BEGINNING, being Lots 3 through 9, Parcel A and the closed portion of Yancey Street and also that certain 16 foot. alley way extinguished by decree of the Circuit

Court of Campbell County, Virginia, in cause of William V. Wilson, et al. v. The Rivermont Company, entered March 20, 1905, for a total of 1.517 acres.

The property hereinabove described is the same property conveyed to the party of the first part by deeds recorded in the Clerk's Office of the Circuit Court for the City of Lynchburg, Virginia, in Deed Book 123, at page 283, Deed Book 125, at page 82, and Deed Book 35, at page 97, and the vacation of Yancey Street, by Ordinance adopted by the Council of the City of Lynchburg, Virginia, on September 17, 1921, see City Council Minute Book, Volume 1, page 11.5.

This conveyance is not subject to recordation tax pursuant to Sec. 58. 1-81i (A)(1), Code of Virginia.

The above-described property is conveyed subject to all easements, conditions, reservations and restrictions which may have been imposed upon said property by recorded deed, plat or other instrument, and which may now be binding thereon, and the covenants, conditions, restrictions and reservations hereinbelow imposed, which covenants, conditions, restrictions and reservations shall constitute covenants running with the land hereby conveyed, to-wit:

1. The parcel herein conveyed shall be maintained as one unit and shall not be subdivided.

2. The Grantee shall maintain the facade as near as is practicable in the style presently reflected. The external architecture of the Garland-Rodes school building shall not be altered without prior approval of the Grantor.

3. The Garland-Rodes building located on the above-described property shall not be demolished.

4. The structural integrity of the Garland-Rodes school building shall be maintained and every effort shall be made to prevent deterioration of the building.

5. The integrity of the Garland-Rodes school building's features, materials, appearance, workmanship and environment shall be preserved when maintaining, repairing and/or restoring.

6. Grantor conveys to the Grantee the hereinabove

described Garland-Rodes school to be used as a school for the arts, but if Grantee no longer uses or operates the hereinabove described and conveyed real estate as a school for the arts, the said property shall be used for education, cultural, historical, recreation, religious or charitable purposes.

\* ————— 7. Grantor hereby retains the following described contingent reversionary interest in the above-described property:

Should Grantee or its successors or assigns elect: to no longer use the property as a school for the arts, or for education, cultural, historical, recreation, religious or charitable purposes, the then owner of the property shall notify Grantor, by certified mail addressed to the City Manager, in writing, of its intention to no longer use the property for such purpose; and Grantor shall then have ninety (90) days from the date of receipt of said notice to exercise its contingent reversionary interest by notifying the then owner of the property in writing of its intent to have the property revert back to Grantor. The property shall then revert to Grantor at such time as Grantee or its successors or assigns ceases to use the property for such purposes. Should Grantor fail to so exercise its reversionary interest, any and all of Grantor's contingent reversionary interest in the property shall expire and **terminate** at midnight on the ninetieth (90th) day following the date of receipt of the then owner's notice to Grantor.

Furthermore, provided the reversionary interest has not already expired, should Grantee or its successors or assigns desire to transfer the property, the then owner of the property **may** notify Grantor, by certified mail addressed to the City Manager, in

writing, of its intention to transfer the property, and Grantor shall then have ninety (90) days from the date of receipt to notify the then owner of the property in writing of Grantor's intention to exercise its reversionary interest should the transfer occur. In the event Grantor fails to exercise its reversionary interest within said 90 day period, any and all of Grantor's contingent reversionary interest shall expire and terminate at midnight on the ninetieth (90th) day following the date of receipt of the then owner's notice to Grantor. In the event Grantor notifies the then owner of the property within said 90 day period of its intent: to exercise its reversionary interest, Grantee shall then have the option (a) not to transfer the property, in which case Grantor's contingent reversionary interest shall remain, or (b) to have the property revert back to Grantor.

TOGETHER WITH an exclusive easement for the benefit of and as an appurtenance to the herein described and conveyed real estate, to perpetually use, operate, maintain, inspect, repair, restore, replace, rebuild, construct and improve the walls, foundations or supporting structures of any improvement, building or structure now or hereafter located upon the following described real estate, to-wit:

BEGINNING 86.15 feet southeast of an iron pin set at the most northerly point along the northern lot line of the hereinabove conveyed property; thence S. 86" 12' 00" E. 34.12 feet to a point; thence S. 3" 36' 00" W. 15.00 feet to a point; thence N. 62" 30' 00" W. 37.32 feet to the point of BEGINNING, being 256 square feet or 0.006 acre, and designated on the attached plat as "Perm. Easement, 256 Sq. Ft., 0.006 Ac."

The easement shall further include the right of unimpaired access thereto.

THERE IS FURTHER GRANTED AND CONVEYED a perpetual, non-exclusive easement for the benefit of and as an appurtenance to the herein described and conveyed real estate, and designated as

"Perm. Maintenance Easement & Joint Use Of Parking Lot" as shown on the attached plat, to be used by the parties hereto, their agents, successors, assigns, employees and invitees, for the maintenance, repair and improvements that may be desirable or necessary for the building and structures located on the above described and conveyed **real** estate and to park or store motor vehicles thereon, subject to such rules and regulations as may be reasonably imposed by the party of the first part for the orderly use and operation of the said permanent maintenance easement and joint use of parking lot.

The said easement is described according to said plat as follows, to-wit:

BEGINNING at an iron pin set at the most northerly point of the hereinabove conveyed property along the dividing line between the property owned by the party of the first part and property now or formerly owned by Prancoise D. Watts: thence N. 05° 45' 12" E. 39.71 feet to an iron pin set: thence S. 78° 01' 30" E. 218.79 feet to an iron pin set; thence S. 11° 23' 33" W. 99.34 feet to an iron pin set: thence N. 62° 30' 00" W. 223.66 feet to the point of BEGINNING.

THERE IS FURTHER GRANTED AND CONVEYED a perpetual, non-exclusive easement and right of way for ingress and egress for the benefit of and as an appurtenance to the property hereinabove described and conveyed, along, over and across Lots 1 and 2, Block 79, Plan B of the Rivermont Company, that portion of Yancey Street (also known as Miller - Claytor Lane), adjoining to and north of the said Lots Nos. 1 and 2, and the area shown on the attached plat as "Access Easement" and known as the Riverside Park Entrance, to be used jointly and in common with all other having a like right.

By accepting and executing this deed, Virginia School of the Arts, for itself, its successors and assigns, agrees to be bound by the foregoing.

IN WITNESS WHEREOF, the City of Lynchburg and Virginia School of the Arts have caused this deed to be executed by their duly authorized representatives as of the date first-above

written.

CITY OF LYNCHBURG

By

Charles F. Church  
Its City Manager

ATTEST:

Patricia Kost  
Patricia Kost, Clerk of Council

ACCEPTED AND AGREED TO:  
VIRGINIA SCHOOL OF THE ARTS, INC.

By

Charles F. Church  
Its

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, TO-WIT:

I, Charles F. Church, a Notary Public in and for the Commonwealth of Virginia, at large, do hereby certify that Charles F. Church, City Manager of the City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, whose name is signed on the foregoing deed, has acknowledged the same before me.

Given under my hand this 17<sup>th</sup> day of March, 1995.

Charles F. Church  
Notary Public

My commission expires February 27, 1996.

COMMONWEALTH OF VIRGINIA;

CITY OF LYNCHBURG, to-wit:

I, Charles F. Church a Notary Public in and for the Commonwealth of Virginia, at large, do hereby certify that Patricia Kost, Clerk of Council, whose name is signed on the foregoing deed, has acknowledged the same before me. Given under my hand this 17<sup>th</sup> day of March, 1995.

Charles F. Church  
Notary Public

My commission expires February 27, 1996.



January 3, 2002

200 1-2002  
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*Assistant Director*

Mr. Kimball Payne, City Manager  
City of Lynchburg  
900 Church Street  
Lynchburg, VA 24505

Dear Mr. Payne:

On behalf of the Board of Directors of the Virginia School of the Arts, I would like to thank you for taking the time to meet with Page Sydnor, Turner Perrow and myself on November 30, 2001. At that time we discussed the possibility of removing the contingency reversionary interest clause from our deed for the Garland-Rodes building at 2240 Rivermont Avenue.

Enclosed is some background information on the Garland-Rodes building as well as on Virginia School of the Arts. I would also like to extend an invitation to you and the Mayor and Council to come by and visit the school on any afternoon to see the students dance as well as to experience the productive re-use of the Garland-Rodes classroom space. We would love to arrange for a special demonstration for Council.

We have prepared an information packet for each Council Member. Please let me know if there is anything else that you need.

Sincerely,

Mary Cooper  
Executive Director